

## **Appendix F: Participant Rights (0394)**

### **Appendix F-1: Opportunity to Request a Fair Hearing**

The State provides an opportunity to request a Fair Hearing under 42 CFR Part 431, Subpart E to individuals: (a) who are not given the choice of home and community-based services as an alternative to the institutional care specified in Item 1-F of the request; (b) are denied the service(s) of their choice or the provider(s) of their choice; or, (c) whose services are denied, suspended, reduced or terminated. The State provides notice of action as required in 42 CFR §431.210.

#### **Procedures for Offering Opportunity to Request a Fair Hearing.**

Describe how the individual (or his/her legal representative) is informed of the opportunity to request a fair hearing under 42 CFR Part 431, Subpart E. Specify the notice(s) that are used to offer individuals the opportunity to request a Fair Hearing. State laws, regulations, policies and notices referenced in the description are available to CMS upon request through the operating or Medicaid agency.

Participants will receive a Notice of Decision in any of the following circumstances:

1. The individual is determined ineligible for HCBS waiver services;
2. The individual is denied HCBS services as an alternative to institutional care;
3. The individual's choice of provider is denied; or
4. Services to the individual are denied, reduced, suspended or terminated.

The Notice of Decision advises participants of their right to a hearing, the method by which to obtain a hearing, and that they may represent themselves or use an attorney, friend or other spokesperson when they begin receiving services and annually thereafter. This information is also posted on the public website at [www.dhhs.ne.gov/developmental\\_disabilities](http://www.dhhs.ne.gov/developmental_disabilities).

The DDD Director or designee mails the Notice of Decision to the participant and the participant's legal representative at least ten days prior to the action being taken, in accordance with 42 CFR 431.211.

The Notice of Decision includes an advisement that services will continue (or be reinstated) if the participant requests a hearing within ten days of the mailing of the Notice of Decision.

Request for Fair Hearing must be submitted in written hardcopy or electronic form. All Notices of Decision and Requests for Fair Hearing are maintained in electronic form, in accordance with the Records Retention Schedule applicable to the Division of Developmental Disabilities (DDD). Fair hearing rights are provided in English and Spanish according to the language spoken at home on file and may be translated into other languages upon request.

**Appendix F-2: Description of Additional Dispute Resolution Process.** Describe the additional dispute resolution process, including: (a) the State agency that operates the process; (b) the nature of the process (i.e., procedures and timeframes), including the types of disputes addressed through the process; and, (c) how the right to a Medicaid Fair Hearing is preserved when a participant

elects to make use of the process: State laws, regulations, and policies referenced in the description are available to CMS upon request through the operating or Medicaid agency.

☒ The State of Nebraska does not offer an Additional Dispute Resolution Process.

### **Appendix F-3: State Grievance/Complaint System:**

#### **a. Operation of Grievance/Complaint System. *Select one:***

☒ **Yes. The State operates a grievance/complaint system that affords participants the opportunity to register grievances or complaints concerning the provision of services under this waiver**

#### **b. Operational Responsibility.** Specify the State agency that is responsible for the operation of the grievance/complaint system:

Individuals receiving supports through the waiver may register a grievance or complaint with the DDD and are informed that filing a grievance or making a complaint are not a pre-requisite or substitute for a fair hearing.

#### **c. Description of System.** Describe the grievance/complaint system, including: (a) the types of grievances/complaints that participants may register; (b) the process and timelines for addressing grievances/complaints; and, (c) the mechanisms that are used to resolve grievances/complaints. State laws, regulations, and policies referenced in the description are available to CMS upon request through the Medicaid agency or the operating agency (if applicable).

##### **a) The types of grievances/complaints that participants may register.**

Individuals receiving supports through the waiver may register the following types of grievances/complaints:

1. Safety, endangerment, or welfare issues;
2. Suspicion of Medicaid fraud;
3. Violations by providers of Medicaid regulations, DDD regulations or policy by DDD/Medicaid providers;
4. Issues regarding pre-admission screening, pre-authorization, or fiscal management services;
5. Issues related to paid supports other than legal representatives, such as social worker, doctor, therapist;
6. Issues related to participant's service coordinator;
7. Difficulty with DD services and/or provider agencies.

##### **b) The process and timelines for addressing grievances/complaints.**

The grievance/complaint may be submitted via mail, email, and phone or in person at a local DHHS office. DDD also has a central phone number that individuals can call to file a complaint or to ask questions. Individuals can also write a letter and mail or fax it in to

the DDD. All individual grievances/complaints are responded to within 24 working hours and logged using a system maintained by DDD. The DDD Director or designee will work with the appropriate groups to address the grievance/complaint. Complaints, questions or concerns are either responded to directly by DDD or referred to the Licensing Unit at the Department of Health and Human Services (DHHS) Division of Public Health (DPH), if appropriate. The Division of Public Health provides certification and licensing services to individuals, agencies and institutions in Nebraska and handles any complaints related to professional licenses or certifications. Once the grievance/complaint has been resolved, the DDD Director or designee will provide a written notification of the outcome to the complainant. Resolution of the grievance/complaint may involve working with DHHS Division partners, multiple providers, and/or the participant's ISP team, thus, there is no specified timeframe for the state making resolution and notifying the complainant. Designated DDD and/or DPH staff are expected to take immediate steps to make resolution and notification. Documentation of the issue and outcome will be retained by DDD in an electronic complaint log maintained by DDD. All grievances/complaints are maintained in electronic form, in accordance with the Records Retention Schedule applicable to the Division of Developmental Disabilities. (DDD).

c) The mechanisms that are used to resolve grievances/complaints.

The mechanisms for resolving the complaint and preparing the response include, but are not limited to, follow-up by phone, letter, home visit, provider agency visit, DPH licensing, and/or referral to another agency (e.g., Child Welfare Services, Adult Protective Services and Medicaid Fraud Control Unit).